

From: Dennis Sosnoski
To: Microsoft ATR
Date: 1/24/02 3:12pm
Subject: Microsoft Settlement

Dear DOJ,

In a prior email I expressed my concern that the proposed DOJ settlement with Microsoft is inadequate and ineffective. Here are my recommendations to the Court for a settlement which would serve the purposes of (1) eliminating the benefits to Microsoft of past illegal activity, (2) restoring competition to the marketplace, and (3) guarding against future illegal activities. Bear in mind that these are written from the standpoint of a software developer and are mainly concerned with the technology issues involved.

1. Microsoft should be required to reverse the present integration of Internet Explorer into the operating system software. If the company wishes to include functions in the operating system which use a web browser they should be required to define a public API to be used by the operating system for accessing the web browser. This will allow the owner of the system to choose any browser which supports that API, eliminating any arguments that Internet Explorer is a "required" component of the operating system.

2. Many other types of applications beyond the browser are now being "integrated" by Microsoft into the operating system. These include messaging software, multimedia software, and email software. Microsoft supplies their implementations of these functions with the operating system and makes it difficult or impossible to remove these implementations. In addition to limiting customer choice this also creates security vulnerabilities to the consumer, with no recourse under current law. As an extension of activities already found to be illegal these activities should also be stopped.

The court should appoint a technical overseer of the company who will monitor their actions in adding functions to the operating system and determine which additions are really separate applications (i.e., software functions which could plausibly be handled equally well by programs installed separately from the operating system). For any additions found to be applications the company should be required to make the components completely removable, with public APIs if the application is used by the operating system (as for Internet Explorer in 1, above). These public APIs should be required to be published at least six months prior to any shipment of a Microsoft product using the APIs; if an API is changed by Microsoft after initial publication a new six month interval will apply from the time the change is published.

Microsoft should have the right to appeal the decisions of the overseer

as to which components are applications, but those decisions should be in force while any appeals are in progress. Microsoft should not be allowed to ship any new operating system, version of an existing operating system, or update to an existing operating system until the technical overseer has had the opportunity to review the changes (including comment from the public) and determine which changes are actually added applications. Outside parties should also have the right to appeal the decisions of the overseer if they feel these decisions are contrary to the settlement.

3. All APIs used by Microsoft applications (including those additions to the operating system which the technical overseer decides are really separate applications) should be subject to the six month publication rule. This should also apply to all file formats and communications protocols used by Microsoft products.

Microsoft should be required to waive any patent or other intellectual property rights to these APIs, formats, and protocols in order to allow free and open competition with their monopoly operating system and related products. They should also be prohibited from circumventing this requirement by licensing intellectual property rights from a third party which they can then use in their products.

The only exceptions to these rules should be for cases where (1) Microsoft needs to license intellectual property rights in order to compete in a market, or (2) full disclosure of an API, format, or protocol would create an unavoidable security vulnerability to the users. It's difficult to see how (2) could ever apply, since if there is a vulnerability in an API, format, or protocol it can normally be corrected by a change to that API, format, or protocol, but if Microsoft is able to prove such a situation to the satisfaction of the technical overseer this should be allowed as an exception. Here again, both Microsoft and outside parties should be allowed to appeal the decisions of the overseer.

4. If Microsoft ships products in violation of the settlement terms they should be required to issue an apology and partial refund to every purchaser of the violating product, including end users who purchased the product indirectly. The amount of the partial refund should be determined by the technical overseer in keeping with the severity of the violation but should be a minimum of five percent of the retail cost of the product. In cases of deliberate violations of the settlement terms the company should also be subject to a fine which is a minimum of all profits to the company from the sales of the violating product during the term of the violation (exclusive of the partial refund to customers). Any company personnel involved in a deliberate violation should also be prosecuted for Contempt of Court.

4. On the licensing front, Microsoft should be made to post an public

list of operating system prices to OEMs based solely on volume and operating system version. They should be required to make available versions of all operating systems with and without bundled or integrated applications, with price differences which reflect Microsoft's development costs for the bundled or integrated applications vs the base operating system. The technical overseer should have the right to approve or modify the prices to reflect this agreement, if necessary with the help of accounting audits.

Microsoft should not be allowed to delay or refuse sales to any party at the published rates except for valid business reasons such as nonpayment. Any such refusal should require full documentation, with heavy fines and damages paid to the party involved if Microsoft is found to have acted improperly. Any threats by Microsoft to delay or refuse sales should be considered the same as an actual delay or refusal. Microsoft should be specifically prohibited from delaying or refusing sales on the basis of any alterations to the operating system (such as addition of other software components, or removal of Microsoft-supplied components) performed by the OEM, though they should be allowed to require the OEM to inform the user of any such alterations.

5. All costs of the enforcement of the agreement should be paid by Microsoft. This includes all costs associated with the technical overseer, including costs of audits and technical consulting.

I believe these recommendations are fair and equitable, and hope the Court will consider them in arriving at a final settlement for this case.

Sincerely,

Dennis M. Sosnoski
President
Sosnoski Software Solutions, Inc.
14618 NE 80th Pl.
Redmond, WA 98052